(12)

No. 96-1577

In The

Supreme Court of the United States

October Term, 1997

STATE OF ALASKA,

Petitioners,

vs.

NATIVE VILLAGE OF VENETIE TRIBAL GOVERNMENT, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICUS CURIAE* TANANA CHIEFS CONFERENCE IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

Tanana Chiefs Conference, Inc. ("TCC") is an inter-tribal organization comprised of 43 federally recognized Alaska Native tribes, including Respondents, the Gwich'in Athabascan villages of Arctic Village and Venetie. TCC's member tribes are composed of 14,000 Athabascan Indians, or about 14% of the Alaska Native population. The Alaska Native Claims Settlement Act ("ANCSA") designated TCC as one of the entities authorized to implement ANCSA. 43 U.S.C. § 1606(a)(5) and (d).

Arctic Village and Venetie, together with TCC's other member tribes, are named in ANCSA as "Native Villages subject to this Act." 42 U.S.C. § 1610(b)(1). Most of TCC's member tribes have authorized TCC to provide federal governmental services to them and their tribal members amounting to over $50 million annually. Pursuant to the Tribal Self-Governance Act of 1994, the Secretary of the Interior and the Secretary of Health and Human Services have entered into self-governance compacts with TCC member tribes, through TCC, transferring to TCC responsibility for providing the full range of Bureau of Indian Affairs and Indian Health Service programs, services and functions. These functions include medical, dental, vision, mental health, education, employment, trust property management, tribal government operations, tribal court assistance, and Indian child welfare protection. These compacts acknowledge the self-governance rights of TCC member tribes, and especially provide that the trust relationship between the federal government and the TCC member tribes

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[1] Letters from all parties consenting to the filing of this brief have been filed with the Clerk of this Court. Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members or its counsel made a monetary contribution to the preparation and submission of this brief.

shall not be deemed to be diminished because of tribal self-administration of federal programs and services. These compacts confirm the federal government's longstanding view that giving Alaska Natives increasing autonomy does *not* diminish the federal government's trust responsibilities.

Alaska's contention that ANCSA terminated the dependent Indian community governed by the Native Village of Venetie Tribal Government is premised upon reasoning that applies to all Alaska Native tribes. If Alaska's argument is accepted, the long-recognized self-governing powers and rights of these tribes could be severely curtailed. TCC and its member tribes have a fundamental interest in protecting these sovereign powers and the right to exercise them under the same principles of federal Indian law that apply to tribes in every other State. Moreover, TCC villages should be able to rely upon the federal government's promises, contained in the compacts, that tribal self-determination - whether in the form of ANCSA or through the operation of federal Indian programs - shall not result in diminishment of federal trust obligations, nor be a basis to deny Alaska Natives the power to govern themselves in the same manner as other American Indian tribes.

SUMMARY OF ARGUMENT

Petitioner agrees that if Alaska Natives occupy or use "Indian country," they have certain political rights regarding the governance of that country they would not otherwise have, *including* the right to impose the tax at issue in this litigation. Specifically, Petitioner agrees that "within [Indian country] tribes have broad authority -- subject to federal limitations -- to govern not only their own members, but also land and non-members." Pet. Br. at 18 & n.9; Pet. at 2 (noting that this authority includes the power to tax and to regulate).

Accordingly, the central question presented here is whether Respondents do or do not occupy "Indian country."

In 1948, Congress specified that "Indian country" "means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States . . . (b) all dependent Indian communities within the borders of the United States . . . and (c) all Indian allotments, the Indian titles to which have not been extinguished." 18 U.S.C. § 1151. Because this case does not involve an "Indian reservation" within the meaning of clause (a), or an "Indian allotment" within the meaning of clause (c), the question is whether Respondents are "dependent Indian communities" within the meaning of clause (b). If they are, as the Court of Appeals ruled, the land they occupy is "Indian country," and the judgment below should be affirmed.

The district court concluded that until enactment of ANCSA in 1971, Respondents were "dependent Indian communities" and the land they occupied was therefore "Indian country."[2] The district court ruled, however, that ANCSA "extinguished Indian country in Alaska." Pet. App. 2a.

The Court of Appeals agreed that before enactment of ANCSA respondents were dependent Indian communities, but it found no basis in the text, legislative history, or purpose of ANCSA to believe that in enacting ANCSA Congress intended to extinguish Indian country or the rights of dependent Indian communities, or to abandon the federal government's historical trust relationship and responsibilities towards dependent Indian

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[2] "Until 1971, there is little doubt but what the Neets'aii Gwich'in were treated by Congress and the Executive agencies as being subject to active superintendence to such a degree as to amount to a dependent Indian community for purposes of 18 U.S.C. § 1151(b)." Pet. App. 67a.

communities.

Our basic point is that the courts should not impute to Congress an intent to abandon its trust responsibilities to dependent Indian communities unless that intent is expressed in clear and unambiguous terms. Because that point is supported by fundamental principles of equity and nearly two centuries of precedents, Petitioner is forced to argue that "*the clear intent* of Congress in enacting ANCSA" was to preclude the treatment of lands conveyed to Alaska Natives under the Act as Indian country. Pet. Br. at 27 (emphasis added). But that is plainly not so. Even the district court acknowledged that "the Indian Country issue was *not expressly resolved by ANCSA*." Pet. App. 72a (emphasis added). Indeed, as the district court noted, "ANCSA does not once mention the term 'Indian country,'" because, in its view, "Congress deliberately, and no doubt for political reasons, left unresolved the Indian Country question which the court now decides." Pet. App. 71a.

Moreover, there is no basis in the text, purpose or legislative history of ANCSA even to infer a congressional purpose to extinguish any rights of dependent Indian communities *other than* their aboriginal land claims. The purpose of the Alaska Native Claims Settlement Act, as the name of the Act itself suggests, was to provide for "a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." 43 U.S.C. § 1601 (a). It was *not* the purpose of that Act to diminish any rights of Alaska Natives other than aboriginal land claims, and it was *not* the purpose of that Act to terminate or diminish the trust responsibilities or obligations of the United States to Alaska Natives. The Congressional declaration of policy makes that explicitly clear: "no provision of this chapter shall replace or diminish any right, privilege, or obligations of Natives as

citizens of the United States or of Alaska, or relieve, replace or diminish any obligations of the United States or of the State [of] Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or of Alaska." 43 U.S.C. § 1601(c).

Accordingly, Petitioner is forced to argue that, as a matter of law, an Indian community cannot be "dependent" on the United States within the meaning of one statute (18 U.S.C. § 1151), if the United States has granted that community fee simple title to the land it occupies under another statute (43 U.S.C. § 1601 *et seq.*). But there is no inherent or irreconcilable conflict between land ownership and dependency. Minors can own title to land, but still be dependent on their parents. And Indian communities can own title to land and still be dependent on the federal government. Land ownership is only one of the many factors that make up the complex relationship between Indian communities and the United States government.

Finally, "Indian country," as defined by 18 U.S.C. § 1151(b), includes "*all* dependent Indian communities within the borders of the United States." *Id.* (emphasis added). This definition is all-encompassing and, by its terms, does not exclude Indian communities that own title to the lands they use and occupy. To the contrary, the statutory definition explicitly incorporates 18 U.S.C. § 1154, which makes clear that "[t]he term 'Indian Country'" *does* include "fee-patented lands" so long as those lands are within "Indian communities."

The Court of Appeals was thus correct in concluding that ANCSA preserved Indian country and the rights of dependent Indian communities such as Respondents. The decision below should be affirmed.

ARGUMENT

I. ALASKA NATIVE VILLAGES ARE "DEPENDENT INDIAN COMMUNITIES," AND THE COUNTRY THEY OCCUPY IS THEREFORE "INDIAN COUNTRY."

A. To Determine Whether Alaska Native Villages Are "Dependent Indian Communities," the Court Should Look to the Well-Established Meaning of That Term, and Not Ask, as Alaska Argues, Whether These Villages Are Like Reservations.

In 18 U.S.C. § 1151, Congress established an expansive definition of the term "Indian country." On its face, the statute creates three different categories of Indian country - "reservations," "dependent Indian communities," and "allotments." Petitioner in this case attempts to equate "reservations" and "dependent Indian communities," but provides no explanation as to why this Court should read the words "dependent Indian communities" out of the statute.[3] As section 1151 itself and the history of the terms used therein

[3]Alaska's argument fails to acknowledge that the federal government generally retains its trust relationship with an Indian tribe even after Congress has explicitly "terminated" its reservation. *See DeCoteau v. District County Court*, 420 U.S. 425, 442-43 (1975) (describing the ongoing trust relationship between the federal government and the Sisseton-Wahpeton Sioux Tribe after the termination of the Tribe's reservation). Moreover, a "dependent Indian community" may exist on former reservation lands. *See United States v. South Dakota*, 665 F.2d 837 (8th Cir. 1981), *cert. den.*, 459 U.S. 823 (1982) (emphasizing the ongoing superintendence by the federal government of the Sisseton-Wahpeton Sioux Tribe).

demonstrate, those terms are distinctly different.

In enacting section 1151, Congress expressly adopted language from this Court's opinion in *United States v. Sandoval*, 231 U.S. 28, 46 (1913). In *Sandoval*, the Court found that "[t]he people of the pueblos" were a "dependent Indian community" and thus occupied Indian country. 231 U.S. at 39. In coming to this conclusion, the Court focused on the "race, customs, and domestic government" of the community. Finding that the people of the pueblos were Indian in all of these respects and that they had "[a]lways liv[ed] in separate and isolated communities," the Court then considered whether they had been "treated . . . [with] special consideration and protection, like other Indian communities[,]" by the federal government.[4] *Id.* Because the people of the pueblos had been "recognized" as a tribe by the "political departments of the government," and thus had a trust relationship with the federal government, the Court found that they were "dependent." *Id.* at 47.

As *Sandoval* and subsequent cases demonstrate, the test to determine if a given community is a "dependent Indian community" does *not* turn on whether the community occupies land that is "like a reservation." Whether particular land is a reservation depends on whether the *land* was set aside for Indian use and occupancy. In contrast, the term "dependent

[4] *Sandoval* notes that this "protection" is demonstrated by federal appropriations for the education and economic development of the pueblo communities. *Id.* at 39-40. As the court below describes, Pet. App. at 27a, Alaska Native villages, both before and since ANCSA, have received and continue to receive substantial federal appropriations for Indian programs available to tribes throughout the United States. *See* 43 U.S.C. §§ 1601(g) and 1626(d).

Indian community" focuses on the nature of the *community* that uses or occupies the land in question. Thus, to determine whether Alaska Native villages are Indian country, the Court must simply determine whether these villages are "Indian communities" and whether they are "dependent." If so, the land the community uses or occupies is Indian country.[5] Under the well-established meaning of these terms, Alaska Native villages, including Arctic Village and Venetie, are clearly dependent Indian communities.

B. Alaska Native Villages Are Plainly "Indian Communities" and Have Been Federally Acknowledged and Recognized To Be Distinct Indian Communities.

There is no doubt that Alaska Native villages are Indian communities; Petitioner does not appear to dispute that fact. These communities are of distinctly Indian character. For example, according to the 1990 Census, the population of Arctic Village was 100% Alaska Native, and of Venetie was 99.4%. In Arctic Village 61.2% of the population spoke a language other than English; in Venetie, the percentage was

[5]It is sufficient that a "dependent Indian community" use or occupy land *as a community* in order for that land to be Indian country. In this case, the land in question is Respondents' former reservation territory, which they have used and occupied since time immemorial. Thus, the extreme extensions of Indian country suggested by Petitioner and its *amici* are completely unfounded. If, for example, a dependent Indian community were to purchase land for a purely commercial venture, rather than use and occupy it as a community, that land would not be Indian country. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 153 (1973).

80.3.[6]

Formal "Federal recognition" has been extended to 226 Alaska Native villages including, specifically, Arctic Village and Venetie. 58 Fed. Reg. 54364, 54368-69 (October 21, 1993).[7] In doing so, the Department of the Interior "expressly and unequivocally" affirmed that these villages "are *distinctly Native communities* and have the same status as tribes in the contiguous 48 states . . . . [including] the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes." *Id.* at 54365-66 (emphasis added).

C. Alaska Native Villages Are "Dependent" Indian Communities.

The adjective "dependent" describes an Indian community that is under federal superintendence. Under its plenary authority over Indian affairs, Congress has long assumed a trustee relationship with Indian tribes. This superintendence relationship exists until such time as the federal government

[6] Although the Census does not identify this language, the evidence before the district court below identifies it as Gwich'in. *See* Pl. Ex. 171, p. 18. That Census also shows that of the 226 Alaska Native villages, nearly two-thirds were over 80% Alaska Native. 1990 Census of Population, General Population Characteristics: Alaska, 1990 CP-1-3, Table 14 (U.S. Dept. of Commerce 1992).

[7] This 1993 Federal Register Notice of federally recognized tribes was only the latest formal recognition of Alaska Native villages as tribes. The Notice, after reviewing the history of federal recognition of Alaska Native villages, concludes that those villages have consistently been subject to the same legal principles as Indians in other states. 58 Fed. Reg. at 54365. *See also* Cohen, Federal Indian Law 934-38 (1958 DOI ed.).

terminates the relationship. Thus, this Court has always emphasized that a "dependent Indian community" is one which is under the "supervision and guardianship" of the federal government. *See e.g., United States v. McGowan*, 302 U.S. 535, 538 (1938); *United States v. Creek Nation*, 295 U.S. 103, 109-110 (1935) ("The tribe was a dependent Indian community under the guardianship of the United States"); *United States v. Chavez*, 290 U.S. 357, 361 (1933) ("The people of these pueblos . . . . have [been] regarded . . . as dependent Indian communities requiring and entitled to its aid").

Contrary to petitioner's claim, federal superintendence -- and hence a "dependent" relationship -- does not mean that the federal government "assumes jurisdiction and control over virtually all facets of the community to supervise, protect, and, indeed sustain the Indians residing there." Pet. Br. at 40. Federal Indian policy and law have always been clear that so long as Indian communities can depend on the federal government for protection and assistance, they are "dependent" Indian communities, even if the federal government permits them to have substantial autonomy and independence. Indeed, increasing tribal autonomy and independence is an essential component of the federal government's trust responsibility.

The federal government has long recognized Alaska Native tribes, including Arctic Village and Venetie, and thus has established this trust relationship. Whether or not these tribes are "dependent" turns on whether the federal government has terminated its longstanding trust relationship. It has not.[8]

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[8] The very fact of "recognition" by the federal government signifies the establishment (or continuation) of the trust relationship. Indeed, the acknowledgment of the tribe means that the tribe is entitled "to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes." 25 C.F.R. § 83.2.

1. Tribal Self-Determination Is Consistent With the Existence of An Ongoing Trust Relationship.

From its earliest cases, this Court has described Indian tribes as "distinct, independent political communities," *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832), and recognized that Indian tribes "possess[] attributes of sovereignty over both their members and their territory." *United States v. Mazurie*, 419 U.S. 544, 557 (1975). Indian tribes, while dependent on and subject to, the powers of the federal government, nonetheless retain a substantial measure of independence.[9] That fact of independence does not conflict with the ongoing trust relationship because the right of self-government is wholly dependent on the broad powers of Congress. Until Congress severs its trust relationship with an Indian tribe as a political entity, that relationship continues to exist. *See White Mountain Apache Tribe*, 448 U.S. at 143

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[9] Alaska's argument that a tribe is only "dependent" if it lacks any aspect of independence or self-governance conflicts with "notions of sovereignty that have developed from historical traditions of tribal independence," *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 145 (1980), and ignores this Court's clear articulation of the meaning of the term "dependent" as applied to the federal government's relationship with tribes. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 159 (1982); *United States v. Wheeler*, 435 U.S. 313, 326 (1978) *(quoting Worcester v. Georgia*, 31 U.S. at 560-561 ("'[T]he settled doctrine of the law of nations is, that a weaker power does not surrender its independence - its right of self-government, by associating with a stronger, and taking its protection'"); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 207 (1978) ("The Indian nations were, from their situation, necessarily dependent on [the United States]. . . for their protection from lawless and injurious intrusions into their country") (internal quotations omitted).

("The right of tribal self-government is ultimately dependent on and subject to the broad power of Congress"); *Oliphant*, 435 U.S. at 211 (tribes are "dependent" when their sovereignty continues to be "fully subordinated to the sovereignty of the United States"); *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 153 (1980) ("Tribal powers are not implicitly divested by virtue of the Tribes' dependent status"); *see also Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978).

2. *ANCSA Corporate Land Ownership Is Completely Consistent With An Ongoing Trust Relationship.*

Petitioner's argument about ANCSA's conveyance of settlement lands to corporations is difficult to understand. Petitioner seems to argue that, if an Indian community owns the land it occupies, it cannot be dependent. Pet. Br. at 22, 23 & 38 n.28. However, petitioner also appears to argue the opposite: that, if an Indian community does *not* own the land, it cannot be dependent even though the land is owned by a corporation created by the federal government to hold the land for the community's benefit. Pet. Br. at 34 & 38 n.28. Both of these arguments are wrong.

Petitioner's first argument is foreclosed by *Sandoval*. In *Sandoval*, this Court found that the "people of the pueblos," who owned their land, were a "dependent Indian community." Here, the Venetie tribe, through the village corporation created under ANCSA to hold land on its behalf, owns the land that is used and occupied by its villages. Accordingly, unless this Court overrules *Sandoval*, Petitioner's argument must fail.

Petitioner's second argument is similarly foreclosed by this

Court's precedents and the text of section 1151 itself. As noted above, section 1151's definition of Indian country was derived directly from this Court's opinions in *Sandoval* and *McGowan*. Under *Sandoval*, it is settled law that direct ownership by an Indian community of land it uses and occupies is consistent with an ongoing trust relationship with the federal government and the statutory requirements for "Indian country."[10] Under *McGowan*, it is similarly settled that a dependent Indian community can exist on land the community does not own, but which is held in trust for the benefit of the community by the United States government. 302 U.S. at 539. Accordingly, there is no basis in the text, legislative history, or precedent to claim, as Petitioner does now, that land cannot be Indian country if it is owned for the benefit of a particular tribe by a federally created corporation.

Petitioner's two contradictory arguments are flawed because each is based on the fundamental misconception that pervades Petitioner's brief. Both arguments are based on the mistaken view that a dependent Indian community can *only* exist where a tribe uses or occupies land the federal government owns. This Court, however, has long embraced a quite different test for determining whether an Indian community is a "dependent" community, under which federal land ownership has never been dispositive.[11] Rather, the test

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[10]The text of section 1151 expressly incorporates 18 U.S.C. § 1154. Section 1154(c) makes clear that Indian country can exist on " fee-patented lands" in an Indian community. 18 U.S.C. § 1154 (excluding from "Indian country" under that section "fee-patented lands in non-Indian communities").

[11] *See Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114, 125 (1993) (*quoting* F. Cohen, Handbook of Federal Indian Law 34 (1982 ed.)) ("'Indian country [consists of] all lands set aside *by whatever*

has focused on the federal government's trustee or guardianship responsibilities for a *community* of Indians, as "dependent people," regardless of who owns title to the land they use and occupy.[12]

Alaska Native tribes are similar to the 20 "scattered" Indian pueblos in *Sandoval*, all of which were found to be dependent Indian communities. Like the tribes in *Sandoval*, Alaska Natives villages are separate and isolated distinctly

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means for the residence of tribal Indians under federal protection . . . .'") (emphasis added); *United States v. John*, 437 U.S. 634, 649 (1978); *Creek Nation*, 295 U.S. at 109-110 ("The tribe [which held its land in fee simple title] was a dependent Indian community under the guardianship of the United States . . . [The tribe] was in a state of tutelage and entitled to rely on the United States, its guardian, for needed protection of its interests"); *Cramer v. United States*, 261 U.S. 219, 232 (1923) (A "duty of protection" arises from "[t]he general doctrine . . . laid down by this court that the Indian tribes are wards of the nation - communities dependent on the United States"); *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 88-89 (1918) (describing Alaska Natives as "a dependent Indian people" and "dependent Indian tribes or communities"); *United States v. Pelican*, 232 U.S. 442, 450 (1914) ("[T]he fundamental consideration is the protection of a dependent people . . . yet wards of the nation, and . . . not . . . discharged [by Congress] from that condition").

[12]In a 1980 opinion, the Associate Solicitor for Indian Affairs concluded that fee ownership of ANCSA lands by village corporations does "not conflict with the continued status of Native villages as 'dependent Indian communities' since that status does not depend on the nature of title to land . . . . The continued existence of Indian country in Alaska . . . does not conflict with the purposes of the Settlement Act . . . . " "Liquor Ordinance, Village of Allakaket, Alaska," Sol. Op. (Oct. 1, 1980). Because this opinion is final -- unlike the 1993 Associate Solicitor's opinion relied on by Petitioner, which is "under review" -- and concerns the Executive Branch's post-ANCSA enforcement of federal Indian country laws in Alaska, the opinion has been lodged with the Clerk.

Indian communities recognized as tribes by the political departments of the government. They remain under federal protection and reside on lands that ANCSA set apart for them. 43 U.S.C. § 1602(j) (ANCSA lands are expressly *held* "for and on behalf of" Native villages). *See also* 43 U.S.C. §§ 1607(a), 1610(b)(1) & (b)(3), 1611(b), 1615(a) (ANCSA lands and other benefits are provided for "Native villages").[13] Nothing more is needed to establish these tribes as self-governing dependent Indian communities.

3. *The Federal Government Continues To Maintain Its Trust Relationship With Alaska Native Villages, Including Arctic Village and Venetie.*

In 1994, Congress once again recognized its *continuing* relationship with "Alaska Native tribe[s]," 25 U.S.C. § 479a(2),

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[13] ANCSA's principal objective is to protect the right of Alaska Native villages, as tribes, and their members to continue to exist and subsist on their ancestral lands. ANCSA, was enacted to fulfill the promise first made in section 8 of the Alaska Organic Act of May 17, 1884, 23 Stat. 24, that the Alaska Natives "shall not be disturbed in the possession of any lands actually in their use or occupation." *See* S. Rep. No. 92-405, at 75-76 (1971); 117 Cong. Rec. S17282 (Nov. 1, 1971) (Remarks of Senator Stevens) ("there are some 200 villages in Alaska . . . . They seek title to their land . . . . They want the land around their villages, which they have claimed as theirs for centuries"). Indeed, just prior to the passage of ANCSA, the House rejected two amendments to allow the Secretary of the Interior to remove Native villages from their lands. *See* 117 Cong. Rec. H9787-93, H9811-12 (Oct. 20, 1971); 117 Cong. Rec. H9791 (Remarks of Rep. Begich) ("The purpose of this bill is to confirm title to Native land that they have occupied for hundreds of years . . . . These villages and their people do not want just compensation [for ANCSA lands from which the Secretary removes them]; they want their land and continued existence").

including its trust responsibilities. The Federally Recognized Indian Tribe List Act of 1994, §103(2), 25 U.S.C. § 479a note, states that "the United States has a *trust responsibility* to recognized Indian tribes, maintains a government-to-government relationship with those tribes, and recognizes the sovereignty of those tribes." (Emphasis added). The significance of this recognition is highlighted in the House Report on the List Act.

> "Recognized" is more than a simple adjective; it is a legal term of art. It means that . . . a tribe . . . . [is brought] within Congress' legislative powers . . . . A formal political act, it permanently establishes a government-to-government relationship between the United States and the recognized tribe as a *"domestic dependent nation," and imposes on the government a fiduciary trust relationship to the tribe and its members*. Concomitantly, it institutionalizes the tribe's quasi-sovereign status, along with all the powers accompanying that status *such as the power to tax*, and to establish a separate judiciary. Finally, it imposes upon the Secretary of the Interior specific obligations to provide a panoply of benefits and services to the tribe and its members. In other words, unequivocal federal recognition of tribal status . . . establishes tribal status for all federal purposes. H. Rep. No. 103-781, at 2-3 (1994) (emphasis added).

Pursuant to the List Act, the Secretary of the Interior has recognized Arctic Village, Venetie, and 224 other Alaska Native villages as Indian tribes with whom the United States government has "a fiduciary trust relationship." They are thus "dependent Indian communities" within the meaning of 18 U.S.C. § 1151.

II. ANCSA DID NOT TERMINATE INDIAN COUNTRY IN ALASKA.

A. ANCSA Does Not Contain Express Language Terminating Indian Country in Alaska

Congressional intent to extinguish Indian country must be reflected by "clear and plain" language. *United States ex rel. Hualapai Indians v. Santa Fe Pacific R.R. Co.*, 314 U.S. 339, 353 (1941). A similarly clear expression of legislative intent is necessary to terminate federal superintendence, *Bryan v. Itasca County*, 426 U.S. 373, 389-390, 392-393 (1976); *Williams v. Lee*, 358 U.S. 217, 221 (1959), and to terminate tribal powers of self-government. *Bryan*, 426 U.S. at 392-393; *Santa Clara Pueblo*, 436 U.S. at 60.

Despite Petitioner's best efforts, no such legislative intent can be extrapolated from the debates leading up to Congress' enactment of ANCSA. During the five years that Congress considered Alaska Native claims settlement measures, the legislative record is utterly devoid of any mention of the "dependent Indian community" form of Indian country.[14] The

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[14] ANCSA does revoke existing reservations, 43 U.S.C. § 1618(a). ANCSA also prohibits new Native allotments while permitting approximately 9,000 then pending allotment applications to be "approved." 43 U.S.C. § 1617(a). These allotments are granted subject to restricted fees and are administered by the Bureau of Indian Affairs in the same manner as trust allotments in all other states. But ANCSA did not eliminate other forms of Indian country covered by 18 U.S.C. § 1151. *See, e.g.*, "Governmental Jurisdiction of Alaska Native Villages Over Land Nonmembers," DOI Sol. Op. M-36,975, at 108 n. 271 (Jan. 11, 1993) (Metlakatla Indian Community and Chilkat Indian Village), 112 n. 277 (Angoon, Kake and Klawock), 123-124 (Village-owned townsite lands) & 124-30 (Indian country status of Native allotments and

record is equally silent with respect to terminating powers of tribal self-government. Nor does ANCSA terminate the federal government's fiduciary relationship with Alaska Native villages.[15] To the contrary, ANCSA explicitly recognizes a present and continuing federal wardship and trusteeship with respect to Alaska Natives. 43 U.S.C. § 1601(b) and (g)[16]; *see*

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individual Native townsite lots in Alaska, under 18 U.S.C. § 1151(c), not altered by ANCSA).

[15] Indeed the Senate passed a bill in 1970 that required all other federal agencies, except the Department of Health, Education and Welfare, to cease services to Alaska Natives. § 4(b)(1) of S. 1830, 91st Cong. 1st Sess. (1969); 116 Cong. Rec. S11302 (July 14, 1970). Section 4(b)(1) of that bill *was* intended to terminate the United States' trust relationship with Alaska Native tribes. 116 Cong. Rec. S11303 (colloquy between Sen. Harris and Sen. Jackson); *see also id.* at S11307-08, S11310-15, and S11319-23 (July 14, 1970) and S11421-25 (July 15, 1970) (debating and twice rejecting amendments to strike § 4(b)(1)). ANCSA, as enacted, dropped this provision.

[16] By stating that "the settlement should be accomplished . . . without creating a . . . lengthy wardship or trusteeship," ANCSA makes clear that the superintendence continues. Furthermore, the 1988 ANCSA amendments, Act of February 3, 1988, 101 Stat. 1788, continue the federal government's trusteeship into the foreseeable future by allowing for ANCSA lands to be protected from involuntary loss in perpetuity, 43 U.S.C. § 1636(d), and for ANCSA corporation stock to remain inalienable, with voting rights restricted to Native shareholders. 43 U.S.C. §§ 1606(h)(1), (h)(2) and 1629(c). Under these amendments, Alaska Native villages are assured that their use and occupancy of the lands village corporations "hold . . . for and on behalf of a Native village," 43 U.S.C. § 1602(j), will remain unimpaired in perpetuity. The 1988 ANCSA amendments, therefore, are a clear expression of the United States' "obligations of the highest responsibility and trust" with respect to these villages. *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942); *see also* H.Rep.No. 99-712, at 31 (1986) ("[T]he language of ANCSA makes it clear that it did not terminate the 'guardian-ward' status of Alaska Natives . . .").

also 43 U.S.C. § 1626(d). Moreover, in passing amendments to ANCSA in 1988, Congress explicitly disclaimed that the Amendments affected the Indian country status of any lands in Alaska. § 17(a)(2) of the Act of February 3, 1988, 101 Stat. 1814, 43 U.S.C. § 1601 note. Obviously, Congress did not believe that ANCSA's land settlement had terminated Indian country in Alaska in 1971, otherwise that disclaimer would have been unnecessary.[17]

That ANCSA did not terminate the dependent Indian community form of Indian country is most tellingly revealed by what ANCSA did not do. ANCSA did not repeal the Indian Reorganization Act ("IRA"), *see infra* at pp. 22-23, which confirms the powers of Indian tribal governments.[18] Nor did

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[17] A similar disclaimer was also enacted in 1982 in the Indian Tribal Government Tax Status Act. 26 U.S.C. § 7701(40)(B).

[18] Stevens Village's IRA Constitution, approved in 1990, confirms that the Village's jurisdiction encompasses "all lands customarily and traditionally used or owned by the Koyukon people. . . since time immemorial," including ANCSA lands. Articles II and III. The Constitution grants the Village "all the inherent powers of a federally recognized tribal government," including the powers "to raise revenues," maintain law and order, administer justice and enact ordinances. Article X, §§ 1 and 3. Circle Native Community's Constitution, approved in 1991, defines that Village's jurisdiction to include "all lands constituting the *dependent Indian community* of Circle as defined in Federal law." Art. II (emphasis added). The Community's powers are similar to those of Stevens Village. Art. VIII. These constitutions were federally approved only after a review concluded that they were not "contrary" to, *inter alia*, "any . . . Act of Congress." 25 U.S.C. § 476(c)(2)(B) and (3); § 102(1), Act of November 1, 1988, 102 Stat. 2938, 25 U.S.C. § 476 note. Obviously, the Secretary found that these constitutions of TCC member tribes were not "contrary" to ANCSA. Because these constitutions demonstrate that the federal government regards ANCSA lands as Indian country, *amicus* has lodged copies of these constitutions with the Clerk.

ANCSA repeal the Indian country jurisdictional disclaimer in § 4 of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, *as amended by*, § 2(a) of the Act of June 25, 1959, 73 Stat. 141. Nor did it repeal Public Law No. 83-280's extension of civil and criminal jurisdiction over Indian country to the Territory (then State) of Alaska, 18 U.S.C. § 1162(a); 28 U.S.C. § 1360(a), or application of Indian country liquor laws to Alaska tribal communities. 18 U.S.C. § 1161.[19] These laws all recognize that Alaska Native villages occupy "Indian country."

ANCSA's failure expressly to terminate Indian country in Alaska or to terminate any of the powers of self-government of Alaska Native tribes is dispositive. When Congress has in the past sought to end its trusteeship of particular Indian tribes or has sought to extinguish particular lands as Indian country, it has been crystal clear about its intent. Termination acts have always been explicit. For example, 25 U.S.C. § 661 states:

> The purpose of this Act is to provide for the termination of Federal supervision over the trust and restricted property of certain tribes and bands of Indians located in Western Oregon and the individual members thereof . . . and for a termination of Federal services furnished such Indians because of their status as Indians.

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[19] For example, the Secretary has "certified" the liquor ordinances of TCC member "tribe[s] having jurisdiction over . . . Indian country." 18 U.S.C. § 1161. *See* 51 Fed. Reg. 28779 (Aug. 11, 1986) (Village of Minto's Liquor Ordinance exercising jurisdiction over "all lands within the exterior boundary of lands selected" under ANCSA); 48 Fed. Reg. 30195 (June 30, 1983) (Native Village of Northway Liquor Ordinance); 48 Fed. Reg. 21378 (May 12, 1983) (Native Village of Chalkyitsik); and DOI Sol. Op., *supra* (October 1, 1980) (Village of Allakaket Liquor Ordinance operates within a "dependent Indian community").

Similarly, 25 U.S.C. § 722 states:

> Upon the conveyance to the State of Texas of the lands held in trust by the United States for the Alabama and Coushatta Tribes of Texas, the Secretary of the Interior shall *publish in the Federal Register a proclamation declaring that the Federal trust relationship to such tribe and its members has terminated.* Thereafter such tribe and its members will not be entitled to any of the services performed by the United States for Indians because of their status as Indians.[20] *Id.* (emphasis added)

Clearly, Congress understood how to terminate its trust relationship with Indian tribes and to extinguish Indian country in Alaska. It simply chose not to do so. *See Bryan*, 426 U.S. at 389-390 (noting that the express language of the termination acts was "cogent proof that Congress knew well how to express its intent directly when that intent was to subject reservation Indians to the full sweep of state laws and state taxation").

B. ANCSA Follows in a Long Line of Congressional Acts That Establish the Federal Superintendence of Alaska Native Villages.

Petitioner seeks to portray ANCSA as a dramatic departure from prior congressional legislation concerning Indian affairs in Alaska. Nothing, however, could be further from the truth.

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[20] *See also* 25 U.S.C. §§ 564, 564q and 564r (termination of the trust relationship with the Klamath Indians); 25 U.S.C. §§ 741 and 757 (Paiute Indians); 25 U.S.C. §§ 791, 803-804 (Wyandotte Tribe) (repealed); 25 U.S.C. § 821 (Peoria Tribe) (repealed); 25 U.S.C. § 841 (Ottawa Tribe) (repealed); 25 U.S.C. § 891 (Menominee Tribe) (repealed); 25 U.S.C. § 935 (Catawba Tribe); 25 U.S.C. §§ 971, 980 (Ponca Tribe).

ANCSA is simply the latest in a series of congressionally enacted treaties and statutes that superintend the affairs of Indian tribes by developing and promoting tribal independence.

Prior to ANCSA, the most notable such enactment in this century was the 1934 IRA, also known as the Wheeler-Howard Act, 25 U.S.C. § 461 *et seq*. Congress enacted the IRA because it was "[n]ot satisfied solely with centralized government of Indians," *Williams*, 358 U.S. at 220. The "intent and purpose [of the IRA] . . . was 'to rehabilitate the Indians economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism,'" *Mescalero Apache Tribe*, 411 U.S. at 152 (1973) (internal citation omitted), and to "disentangle the tribes from the official bureaucracy." *Id.* at 153. According to Senator Wheeler, the IRA "'seeks . . . to give the Indians the control of their own affairs and *of their own property*; to put it in the hands either of an Indian council or in the hands of a corporation to be organized by the Indians.'" *Id.* at 152 (quoting 78 Cong. Rec. 11125) (emphasis added).

The IRA provides for chartering federal corporations through which tribes would have the

> power to purchase, take by gift, or bequest, or otherwise, *own*, hold, manage, operate, and dispose of property of every description, *real* and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business. . . . 25 U.S.C. § 477 (emphasis added).

This provision (and 25 U.S.C. § 476) has been construed as "encourag[ing] tribal governments . . . to become stronger and more highly organized." *Williams*, 358 U.S. at 220.

The goal of the IRA -- to diminish active federal control over Indian tribes and to enhance and promote tribal independence through use of the "corporate model" -- is virtually indistinguishable from ANCSA's goal. The IRA is clearly a direct antecedent to ANCSA. This Court has ruled that the IRA did not terminate the federal trust responsibility. *Mescalero Apache Tribe*, 411 U.S. at 152.[21] For the same reason, ANCSA also did not.

ANCSA is itself simply another exercise of Congress' superintendence of the affairs of Indian tribes. Like the IRA, ANCSA grew from the most recent era of the federal-tribal trust relationship, which is characterized by a commitment to protect Indian tribes as self-governing communities. Indeed, ANCSA was proposed as part of President Nixon's Indian self-determination policy. H. Rep. No. 92-523, at 19, 22 (1971) (statement of the Secretary of the Interior noting that the President hoped to "strengthen[] the management by Indian groups of their own institutions and organizations of government"). In adopting ANCSA, Congress also was motivated by a commitment to self-determination for Alaska Natives. *See* H. Conf. Rep. No. 92-746, at 37 (1971); 43 U.S.C.

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[21] In enacting ANCSA, Congress left intact those provisions of the IRA which Congress had expressly extended to Alaska Natives. *See* 25 U.S.C. § 473a. *See, e.g.*, 25 U.S.C. § 465 (permitting lands to be acquired in trust for Alaska Native tribes), § 467 (permitting new Indian reservations to be created for Alaska tribes) § 470 (authorizing federal loans to Indian-chartered corporations for "economic development"), § 476 (recognizing the right of Alaska tribes to adopt constitutions for the exercise of inherent sovereign powers and other specified powers of self-government) and § 477 (recognizing the right of tribes to charter federal corporations for economic development purposes). They and the 1994 IRA amendments, 25 U.S.C. § 476(f) and (g), demonstrate that the federal government's superintendence of Alaska Native tribes is ongoing.

§ 1601(b) ("the settlement should be accomplished . . . with maximum participation by Natives in decisions affecting their rights and property").

Thus, the purpose of ANCSA, including its creation of village and regional corporations, was to foster self-government and self-determination in Alaska Native communities. As explained above, *infra* Part I.C, that goal is wholly consistent with the federal government's ongoing trust relationship with Alaska Native tribes and those tribes' status as "dependent Indian communities." Acceptance of petitioner's argument, however, would mean that, because of ANCSA, Alaska Native tribes would no longer have the right to govern their own communities -- including taxing those whose activities burden the community. Because this plainly does violence to Congress' expressed intent, this Court should reject Petitioner's revisionist interpretation of ANCSA.[22]

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[22] That Congress did not intend to terminate the "dependent Indian community" status of Alaska Native tribes is further underscored by the oft-repeated observation by members of Congress on the eve of ANCSA's enactment that the "Alaska Native people as a group are among the most disadvantaged citizens of the United States in terms of income, employment, educational attainment, life expectancy, health, nutrition, housing, and every important indicator of social welfare." Remarks of Sen. Henry Jackson, Chairman of the Senate Committee on Interior and Insular Affairs, 117 Cong. Rec. S17278 (November 1, 1971). Given these statements by ANCSA's principal sponsor, Alaska's argument that Congress intended to abandon its trust responsibility to the most vulnerable and dependent people in America is both unfounded and unthinkable.

C. ANCSA CLEARLY CONTINUES FEDERAL SUPERINTENDENCE TO PRESERVE ALASKA NATIVE TRIBES' USE AND OCCUPATION OF THEIR TRIBAL LANDS

Petitioner argues that ANCSA's conveyance to Native corporations of lands that had historically been used and occupied by Alaska Native villages repudiated the federal trust obligations to those villages, and ended federal superintendence of those lands. That is plainly wrong.

First, the lands were expressly conveyed to Native village corporations to "hold . . . for and on behalf of" Native villages. 43 U.S.C. § 1602(j).[23] *Second*, the Native villages themselves were authorized by Congress to "organize" those corporations, and to prepare their articles of incorporation. 43 U.S.C. § 1607(a) & (b). *Third*, ANCSA imposed detailed restrictions on those corporations, all of which are designed to ensure that the corporations will in fact hold the lands for the benefit of Native villages.[24] *Fourth*, ANCSA required annual and other reports so that Congress could actively monitor whether the Native corporations were fulfilling their responsibilities to the Native villages. *See* 43 U.S.C. § 1622; 43 U.S.C. § 1601(c).

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[23] *Amicus* endorses the argument of Respondents that ANCSA set apart settlement lands for the Alaska Native tribes. *See supra* note 13.

[24] *See, e.g.*, 43 U.S.C. § 1606(g) (issuance of stock limited to Natives); 43 U.S.C. § 1606(h)(1) (corporate stock owned by Natives is subject to restrictions on alienation); *id.* (exempting dividends from alienation); 43 U.S.C. § 1606(h)(2) (forbidding non-Native beneficiaries from voting their stock); 43 U.S.C. § 1627 (limitations on mergers and exemptions from standard corporate law requirements for authorized mergers). To carry out its provisions, ANCSA supplants most of Alaska's substantive corporation law.

Indeed, Congress *has* actively monitored Native corporations and has imposed *additional* statutory restrictions on them in order to ensure that lands held by those corporations will be preserved and used for the benefit of Native villages.[25] These new restrictions would have raised serious concerns under the Takings Clause but for the fact, as Congress noted, that ANCSA

> did *not terminate* the special relationship between Alaska natives and the United States nor abolish Congress' *unique obligation* toward them. The numerous limitations placed upon the corporate entities and their funds *and lands*, the restriction on alienation of the stock, and the *special provisions* made for the corporate entities make clear that Congress intended to retain its power to deal with the affairs and property of the Natives.

H. Rep. No. 100-31 at 21-22 (1987) (emphasis added).

Congress clearly understood ANCSA to *continue* federal trust obligations towards Alaska Native villages -- which in our view is sufficient -- and even to continue federal superintendence of lands conveyed to Native corporations for the benefit of those villages. By enacting ANCSA Congress was not, as Petitioner suggests, washing its hands of further responsibility for Alaska Native villages; instead, it was

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[25]Congress has amended ANCSA 29 times since 1971. *See e.g.*, Pub. L. No. 94-204, Act of June 2, 1976, 89 Stat. 1145 (altering land selection provisions for particular regional corporations); the 1988 ANCSA amendments, Act of February 3, 1988, 101 Stat. 178 (protecting ANCSA lands from involuntary loss, 43 U.S.C. § 1636(d), and restricting voting rights of ANCSA corporation stock to Native shareholders and preserving inalienability of stock, §§ 1606(h)(2), (h)(3), and 1629(c)).

fulfilling that trust responsibility.

III. ACTS OF CONGRESS SUBSEQUENT TO ANCSA CONFIRM CONGRESS' INTENT TO PRESERVE ALASKA NATIVE TRIBES' POWERS OF SELF-GOVERNMENT AND TO MAINTAIN THOSE TRIBES' DEPENDENT STATUS.

Following ANCSA, Congress quickly enacted two other Indian self-determination measures proposed by the Nixon Administration and frequently cited as foundations of the current federal policy to superintend Indian tribes by maximizing tribal independence and self-government. In 1974, Congress enacted the Indian Financing Act, 25 U.S.C. § 1451 *et seq.*, which was intended to " help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources." In 1975, Congress enacted the Indian Self-Determination and Education Assistance Act ("ISDA"), 25 U.S.C. § 450 *et seq.*, which provides:

> [t]he Congress declares its commitment to the maintenance of the Federal Government's unique and *continuing relationship with and responsibility to the Indian people* through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. 25 U.S.C. § 450a(b) (emphasis added).

In 1984, Congress again confirmed the vitality of Indian

country in Alaska by amending 28 U.S.C. § 1360(a) to change "Territory" to "State" of Alaska. § 110 of the Act of July 10, 1984, 98 Stat. 342. Had ANCSA extinguished Indian country, as Petitioner claims, Congress would have repealed this section, rather than amend it.

In 1988, Congress added language to the end of section 450a(b) of the ISDA that reaffirms the federal trust responsibility: "In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities." These purposes were to be implemented *without* "the termination of any existing trust responsibility of the United States with respect to the Indian people." 25 U.S.C. § 450n(2). *See also* Section 1(d)(1) of the "model agreement" set forth in 25 U.S.C. § 450*l*(c). Thus Congress has consistently recognized, and stressed, that its policy of encouraging increasing Indian autonomy and independence is *not* inconsistent with continuation of a federal trust responsibility for Indian tribes and people. 25 U.S.C. § 2701(4); 25 U.S.C. § 3601(2); 25 C.F.R. §§ 32.1, 32.3 & 32.4 (implementing the federal trust responsibility to Alaska Native villages and other tribes pursuant to Title XI of the Education Amendments of 1978, 25 U.S.C. § 2000 *et seq.*).

The Tribal Self-Governance Act of 1994 ("TSGA"), 25 U.S.C. § 458aa *et seq.*, is the latest Indian self-determination act. It provides tribes with an opportunity, greater than any preceding law, to supervise and manage federal Indian programs and services. In § 203 of the Act, 108 Stat. 4271, 25 U.S.C. § 458aa note, Congress determined "to permanently establish and implement [the policy of] tribal self-governance."

Again, however, the TSGA expressly does *not* "diminish the Federal trust responsibility to Indian tribes." 25 U.S.C. § 458ff(b). *See also* 25 U.S.C. § 458cc(a).

Pursuant to the TSGA, Arctic Village, Venetie and some 30 other Alaska Native villages, through TCC, have entered into two TSGA compacts with the federal government. Both unequivocally reaffirm the trust responsibility to the participating tribes. *See* Art. I, § 2(a) and (c), Art. IV, § 1, and the preceding "whereas" clauses. These compacts so fatally undermine Petitioner's claim that ANCSA ended federal superintendence of Alaska Native villages that *amicus* has lodged them with the Clerk.

Many other post-ANCSA acts of Congress also demonstrate a clear purpose to strengthen the ability of tribes, including Alaska Native villages, to govern their tribal communities, without diminishing the federal government's trust responsibility. Particularly important among these are several acts that deal with the jurisdiction and sovereignty of Indian tribes, including the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.* (enhancing the jurisdiction of Alaska Native villages to determine the custody of Native children as part of the federal "responsibility for the protection and preservation of Indian tribes," 25 U.S.C. § 1901(2)); the Indian Tribal Government Tax Status Act, 26 U.S.C. § 7871 (providing excise tax exemptions for transactions involving "the exercise of an essential governmental function of the Indian tribal government," 26 U.S.C. § 7871(b)),[26] and the

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[26] Pursuant to 26 U.S.C. § 7701(40), the Secretary of the Treasury, "after consultation with the Secretary of the Interior" determined that Alaska Native villages, including Arctic Village and Venetie "exercise governmental functions." *See* Rev. Proc. 83-87 (December 12, 1983),

Public Safety Partnership and Community Policing Act ("PSPCPA") of September 13, 1994, 108 Stat. 1807 (making tribes, including Alaska Native villages, eligible for a broad range of law enforcement and criminal justice grants).[27]

CONCLUSION

The judgment below should be affirmed.

1983 IRB No. 50, pp. 6, 11-12. The Secretary also defined "essential governmental function" as a type of function eligible for Snyder Act, 25 U.S.C. §13, funding and ISDA grants or contracts. 26 C.F.R. §305.7871-1(d)(1) and (2). All Alaska Native villages receive Snyder Act funding and participate in ISDA grants and contracts. *See also* H.Conf.Rep. No. 97-984, at 15 (1982) (explaining that the Tax Status Act applies only to "tribal government[s]. . . recognized by the Treasury Department (after consultation with the Interior Department) as exercising sovereign powers . . . . *includ[ing] the power to tax*, the power of eminent domain, and police powers (such as . . . zoning, police . . . and fire protection")) (Emphasis added).

[27] Since enactment of this law, 19 Alaska Native village tribal governments, including Arctic Village, have received Community Oriented Policing Services grants to hire tribal police and purchase law enforcement equipment. More than one-quarter of all funds granted under this law to governments in Alaska have gone to Alaska Native villages. Prior to the PSPCPA, the tribes in Alaska received grants pursuant to § 901(a)(3) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3791(a)(3), *as added by* Pub. L. No. 96-157, 93 Stat. 1167, *as amended by* the Justice Assistance Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837. Under this Act, the Secretary of the Interior was required to identify "tribes performing law enforcement functions" The Secretary identified 198 Alaska Native villages in 1988, 53 Fed. Reg. 33872-75. These functions included employing tribal police, establishing a tribal court, undertaking correction functions, and preventing adult and juvenile delinquency. 53 Fed. Reg. 33867 (September 1, 1988).

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